1

Aluminum Casting & Engineering Co., Inc. and United Electrical, Radio and Machine Workers of America (UE). Cases 30–CA–12855, 30–CA–12902, 30–CA–12943, 30–CA–12944, and 30–CA–12949

May 16, 2001

SUPPLEMENTAL DECISION AND ORDER BY MEMBERS LIEBMAN, HURTGEN, AND WALSH

On April 9, 1999, the Board issued a Decision and Order in the above-captioned case.1 Subsequently, the United States Court of Appeals for the Seventh Circuit issued a decision in which the court enforced in part and remanded in part for the Board to conform its Order to the court's opinion.² The court enforced the Board's findings that the Respondent violated the National Labor Relations Act by (1) discontinuing the Company's practice of conducting annual wage surveys, and based thereon, granting annual wage increases, because employees voted to select the Union as their collectivebargaining representative; (2) failing to announce a wage increase, telling employees that there will not be an annual wage increase, and telling employees that the Union is to blame for the failure to grant an annual wage increase, all because employees voted to select the Union as their collective-bargaining representative; (3) maintaining a rule restricting employee solicitation that does not clearly indicate that employees are permitted to engage in solicitation during nonworking times; (4) soliciting reports of employees who "pressure" employees into supporting the Union; and (5) paying for damage to vehicles for those employees who claim that the damage was caused by union supporters. Contrary to the Board, however, the court found that the Respondent did not violate Section 8(a)(1) of the Act by including in its employee handbook the statement that it was the Respondent's "intention to do everything possible to maintain our company's union-free status for the benefit of both our employees and [the Company]." In accordance with the court's opinion, we will delete that violation from our prior Order and notice.

Before the Seventh Circuit, the Respondent also challenged the Board's remedial backpay Order. That portion of the Board's Order states that the Respondent must "[m]ake whole all employees who were not granted annual wage increases in 1995 to date..." The Respondent argued that the Order is "inherently overbroad" in

¹ Aluminum Casting & Engineering Co., 328 NLRB 8 (1999).

that "the Board did not have before it the question of any wage increases for years following 1995. . . . At most . . . the order should address only the contested 1995 annual increase." The court noted that the Board's Order

did not bind [the Company] to a perpetual practice of granting this particular kind of wage adjustment. To the contrary, it provided that "[t]he exact amounts of the wage increases due employees shall be determined in compliance proceedings, and shall be computed to the extent appropriate. . . . At the compliance stage, [the Company] shall be given the opportunity to establish that even if it had followed its normal practice concerning annual wage increases, no increase would have been given in a particular year." 5

The court also noted that it was unequivocally assured at oral argument by Board counsel that "[the Company] would have the opportunity during compliance proceedings to show that it had completely abandoned across-the-board adjustments as a tool of company policy, in favor of the targeted merit, incentive, training, and development raises it has touted in its briefs." With that understanding, the court found "that the Board's order is entitled to enforcement." We agree with the court's interpretation of the Board's Order

By letter dated February 15, 2001, the Board solicited statements of the parties on the issues raised by the Seventh Circuit's remand. In statements of position filed March 7 and March 1, 2001, respectively, both the General Counsel and the Company agreed that, in response to the remand, "the Board need only modify its Order and Notice consistent with the Court's denial of enforcement of the Section 8(a)(1) finding regarding the handbook . . . [and that the] remedy will be addressed in compliance in accordance with the understanding of the Court. . . ."

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the Seventh Circuit's remand and the General Counsel's and the Respondent's statements of position, and has decided to substitute the attached Order and notice for those issued on April 9, 1999.

ORDER

The National Labor Relations Board conforms the Order to *NLRB v. Aluminum Casting & Engineering Co.*, 230 F.3d 286 (7th Cir. 2000), and orders that the Respondent, Aluminum Casting & Engineering Co., Inc.,

² NLRB v. Aluminum Casting & Engineering Co., 230 F.3d 286 (7th Cir. 2000).

³ 328 NLRB 8, 11 (emphasis added).

^{4 230} F.2d at 295.

⁵ Id. at 296.

⁶ Id.

⁷ Id.

Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Discontinuing the Company's practice of conducting annual wage surveys, and based thereon, granting annual wage increases, because employees voted to select the Union as their collective-bargaining representative.
- (b) Failing to announce a wage increase, telling employees that there will not be an annual wage increase, and telling employees that the Union is to blame for the failure to grant an annual wage increase, all because employees voted to select the Union as their collective-bargaining representative.
- (c) Maintaining a rule restricting employee solicitation that does not clearly indicate that employees are permitted to engage in solicitation during nonworking times.
- (d) Soliciting reports of employees who "pressure" employees into supporting the Union.
- (e) Paying for damage to vehicles for those employees who claim that the damage was caused by union supporters.
- (f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Rescind the unlawfully broad rule restricting employee solicitation.
- (b) Make whole all employees who were not granted annual wage increases in 1995 to date in the manner set forth in the remedy section of the judge's decision, as modified by the Board's decisions, and consistent with *NLRB v. Aluminum Casting & Engineering Co.*, 230 F.3d 286 (7th Cir. 2000).
- (c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under this Order.
- (d) Within 14 days after service by the Region, post at its facility in Milwaukee, Wisconsin, copies of the attached notice marked "Appendix." Copies of this notice, on forms provided by the Regional Director for Re-

gion 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 14, 1994.

- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.
- IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection To choose not to engage in any of these protected concerted activities.

WE WILL NOT discontinue our practice of conducting annual wage surveys and, based thereon, granting wage increases, because employees voted to select the United Electrical, Radio and Machine Workers of America (UE) as their collective-bargaining representative.

WE WILL NOT fail to announce an annual wage increase, tell employees that they will not receive an annual increase, or tell employees that the Union is to blame for the failure to grant an annual wage increase, all because employees voted to select the Union as their collective-bargaining representative.

⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT maintain a rule restricting employee solicitation that does not clearly indicate that employees are permitted to engage in solicitation during nonworking times.

WE WILL NOT ask that you report employees who "pressure" employees to support the Union.

WE WILL NOT pay for damage to vehicles for employees who claim that the damage was caused by union supporters.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unlawfully broad rule that restricts employee solicitation.

WE WILL make employees whole for the annual wage increases that were unlawfully withheld from them.

ALUMINUM CASTING & ENGINEERING CO., INC.